

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

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UNITED STATES OF AMERICA,

Plaintiff,

v.

File No. 1:07-CR-49

KERRY VAUGHN BLACKIE,

Defendant.

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Resentencing

Before

THE HONORABLE ROBERT HOLMES BELL  
United States District Judge  
March 27, 2009

APPEARANCES

JULIE A. WOODS  
Assistant U.S. Attorney  
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Attorney for Plaintiff

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U.S. District Court Reporter

1 Grand Rapids, Michigan

2 March 27, 2009

3 8:47 a.m.

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6 P R O C E E D I N G S

7

8 THE COURT: You may be seated. Good morning,  
9 counsel.

10 MR. STROBA: Good morning, Your Honor.

11 THE COURT: Ms. Woods representing the government,  
12 Mr. Stroba representing the defendant in a retake of United  
13 States v. Kerry Vaughn Blackie, 1:07-CR-49. Mr. Stroba, I  
14 believe this is your first contact with this case; is that  
15 correct?

16 MR. STROBA: That's correct, Your Honor.

17 THE COURT: And I believe in conjunction with this  
18 matter you have sent to the Court a waiver of your client's  
19 presence --

20 MR. STROBA: That's correct, Your Honor.

21 THE COURT: -- to be here.

22 MR. STROBA: He had expressed that to his original  
23 attorney. We followed up on it, sent him a letter, explained  
24 his rights, and he returned the form to us and we filed that  
25 with the Court.

1                   THE COURT: While I far prefer your presence here to  
2 the lawyer who was here before, what is the reason that the  
3 lawyer before didn't appear?

4                   MR. STROBA: I don't know, Your Honor. I really  
5 haven't had any direct contact with him. I assume it had  
6 something to do with finances. I am assuming that without any  
7 knowledge to that effect.

8                   THE COURT: All right. Okay. Thank you.

9                   Well, this matter comes to the Court on a nine-page  
10 published opinion basically for all intents and purposes  
11 saying, Judge, you're one month over the purported guideline  
12 you reached, and therefore, you abused your discretion. So I  
13 guess so much for the freedom of the judges to fashion a  
14 sentence in this case five levels below the original guideline  
15 to achieve what this Court believed was substantial justice in  
16 this case.

17                  The defendant was originally sentenced on August 1st  
18 of 2007 to 42 months of incarceration and three years of  
19 supervised release pursuant to a guilty plea entered May 1st  
20 of 2007 to an indictment charging that of possession of images  
21 of minors engaged in sexually explicit conduct. Mr. Blackie,  
22 however, is -- he would now be 61 years of age with an  
23 associate's degree educationally; apparently employment  
24 somewhat marginal, but mother's yearly contributions to his  
25 bottom line helped him considerably through the years.

1           A plea agreement was accepted in this matter,  
2 obviously, calling for no other prosecution in conjunction  
3 with this. And as this Court indicated and as this Court is  
4 precluded from doing, Ms. Hodel's presentence report, as this  
5 Court concluded various segments of that presentence report,  
6 Paragraph 40 in particular and other levels that were added as  
7 aggravating factors this Court found duplicative of one  
8 another and reduced the adjusted offense level to a 20 and a  
9 criminal history level of I.

10           Does the government wish to make any statement about  
11 this case at this time?

12           MS. WOODS: No, Your Honor. I believe that the  
13 presentence report did provide Your Honor with a good  
14 background on Mr. Blackie and his situation, and we defer to  
15 the Court's discretion. Thank you.

16           THE COURT: Thank you. Thank you.

17           Mr. Stroba?

18           MR. STROBA: Thank you, Your Honor. I will be  
19 brief, Your Honor. The Court has had the benefit of our  
20 resentencing memorandum that we filed.

21           THE COURT: Yes, I have, and thank you.

22           MR. STROBA: And of Mr. Blackie's letter to the  
23 Court that we got shortly after we filed that memorandum.

24           I come to this matter with a little bit different  
25 perspective than most of my cases, and I get to view this case

1 and this particular defendant looking backward, sort of Monday  
2 morning quarterbacking to some extent. I take the Court's  
3 comments regarding Mr. Blackie's original attorney or trial  
4 counsel, but I looked at what he did, and quite frankly I  
5 wouldn't have any problem putting my name on what he did in  
6 terms of preparing this case for the Court's consideration.  
7 And I think with the Court's variance from those originally  
8 scored guidelines, that was appropriate and we'd ask the Court  
9 to continue on with that, obviously.

10 It is clear that this Court gave due consideration  
11 to the arguments and the facts presented to support the  
12 arguments in support of a sentence. In the end the Court  
13 determined that incarceration was necessary to punish and to  
14 deter not only Mr. Blackie, but others.

15 Mr. Blackie has now served some 17 months of his  
16 sentence. He has done well, as this Court would expect and  
17 has the right to expect. But we also know that not all  
18 prisoners do so well, however. Not all prisoners work and  
19 undertake learning a trade as he did in this case, learning  
20 how to sew to be part of the prison industries. And not all  
21 prisoners express their thankfulness for their families as he  
22 does and continues to do. And not all prisoners plan for a  
23 future on the outside, and I think Mr. Blackie is trying to do  
24 everything he can.

25 And my point about that is this. Save for

1 punishment and deterrence, as I look at it, and the Court  
2 obviously has sentenced way more people than I've ever  
3 represented, this is perhaps not a man who otherwise, other  
4 than punishment and deterrence, needs to be incarcerated. We  
5 know now that this honorable Court and other trial courts have  
6 gained some freedom to vary from the guidelines with which it  
7 disagrees on a policy ground, and we know that the child  
8 pornography guideline does not enjoy that presumption of  
9 validity in that it's not as empirically based as other  
10 guidelines were, and so a variance from the guidelines may be  
11 warranted in a given case.

12 We ask this honorable Court to consider what is the  
13 sufficient, but not greater than necessary sentence that this  
14 man with this background at this time needs to serve to  
15 fulfill the dictates of the sentencing statute. Even if the  
16 purpose to be served -- the purposes to be served are  
17 punishment and deterrence, does the sentence in this case have  
18 to be 42 months, 36 months, two years, or otherwise within the  
19 guidelines or perhaps even below the guidelines? After a year  
20 or after two years of serving a sentence, would deterrence  
21 really be served further for somebody who's spent no time in  
22 custody to speak of before this, and is it simply punishment?

23 And if it's punishment, the Court certainly has the  
24 right to consider that, particularly in this type of offense.  
25 That's the Court's prerogative. I remember and I don't

1 remember whether it was a judge or one of the legislators who  
2 said we want to make sure that we're incarcerating people who  
3 are really dangerous as opposed to just those ones that we are  
4 mad at. Certainly child pornography is one that a great deal  
5 of anger can be generated, but given Mr. Blackie's background,  
6 given what he's done since this Court imposed sentence, we  
7 think the Court certainly has enough background to make a  
8 reasoned decision as it had done previously, perhaps with  
9 these new additional facts. Thank you, Your Honor.

10 THE COURT: Thank you. Thank you.

11 Well, it's clear to this Court in reviewing once  
12 again, going through the facts and circumstances of Mr.  
13 Blackie's life, yes, he is a decorated Vietnam veteran. Yes,  
14 he has had children and he has had various personal  
15 relationships.

16 One would have to conclude that his early childhood  
17 associations were not good; that in the '90s and in the early  
18 part of the two years of 2000s, that he had somewhat of a time  
19 of upheaval. Apparently his wife that he married in '92 had  
20 mental health problems and a divorce in '95, but out of that  
21 came a child called Jasmine Teetee that apparently was Mr.  
22 Blackie's primary responsibility in terms of being the  
23 custodian, and in fact there was much devoted to his love and  
24 support and care for this daughter.

25 It appears that Mr. Blackie is fighting some demons

1 not only that he got in the Vietnam War through post-traumatic  
2 stress disorder, but the marital and personal issues that have  
3 persisted since the early '90s have persisted up until going  
4 into incarceration. In fact, in December of '06, a suicide  
5 attempt which was set forth at great length in Paragraphs 77,  
6 78, and 79, self-hatred and other such matters that are  
7 noted.

8 It should be noted that during this time that Mr.  
9 Blackie was the custodian of his daughter, who was an early  
10 teenager at the time, that he downloaded for \$79 a  
11 particular -- as a customer, a particular vulgar and horrible  
12 child pornography site, one of them said here in the reports  
13 one of the worst child pornography sites. It had not very  
14 many images on it compared to what some persons that come  
15 before this Court have had, but from all accounts the images  
16 here were rather traumatically young, young children. Some,  
17 according to the defendant, were children that were babies and  
18 young children, ten to twelve years of age, in other respects  
19 six to twelve years of age. And there was a facial expression  
20 on one of them that obviously had the pose with the sexual  
21 penetration of an adult male which is highly suggestive of the  
22 fact that she is in pain. So we find masochistic conduct in  
23 those contents of those images.

24 Ten of the various 115 images of this child  
25 pornography found on the hard drive of Mr. Blackie's computer

1       were known victim series, the Helen & Gavin and the Sabban  
2       series. These are well-known European and American persons,  
3       children who have been exploited into the international scene,  
4       and he was viewing these at the same time he had custody of  
5       his daughter that he apparently thinks the world of. Those  
6       don't match. They don't match at all. They suggest to this  
7       Court that there are some serious mental health issues that  
8       need to be addressed.

9                   So this matter carries an adjusted offense level of  
10      20 as the appellate court has concluded based upon this  
11      Court's lengthy exposition at the time for sentencing and a  
12      criminal history level of I. Now, I want to go through it  
13      once again and make the point that the Court makes  
14      periodically on these. Criminal history level of I has within  
15      it persons who have past history of criminal behavior which  
16      has historically run the time limit and is considered not  
17      calculable on a grid, but it also includes people who've never  
18      had any issues with the law.

19                  And the Court wants the record to reflect that Mr.  
20      Blackie has had significant prior contact with the law, albeit  
21      in minor ways, but significant contact of lawlessness, but it  
22      is timed out. It is not calculable. So even though it's a  
23      criminal history level of I, it is still background; and even  
24      though it may be ten years old or older, it still goes into  
25      painting the picture of who Mr. Blackie is when he comes to

1       court on that date of August 1, 2007, for the original  
2 sentencing, which was apparently one month too high.

3                 Now, what is the appropriate sentence? The Court  
4 believes the appropriate sentence is a sentence that is  
5 sufficient, but not greater than necessary to comply with the  
6 purposes of Section 3553(a). This Court has articulated the  
7 nature and circumstances of this offense. For someone of  
8 somewhat limited means, although his mother is subsidizing  
9 him, even then \$80, to plunk down \$80 to watch what is called,  
10 quote, "Illegal CP," end of quote, which is this Web site, and  
11 proceed to get the benefit of the bargain, if you will, by  
12 looking at these pictures demonstrates a history and  
13 characteristic of Mr. Blackie that is troubling. Judgment,  
14 troubling; morality, legality, very troubling; custodian of a  
15 young minor child, very troubling to this Court of history and  
16 characteristics.

17                 This is a serious offense, and this Court's  
18 requirement is to firmly and unequivocally indicate that  
19 respect for law means you stay away from these sites. The  
20 First Amendment being what it is, they're available,  
21 regrettably. But good judgment and proper respect for law,  
22 this particular, quote, "Illegal CP," end of quote, had at the  
23 outset, according to the presentence report, kind of a clause  
24 that said this is illegal in all countries. So in order to  
25 crawl through and open that up and proceed on into it, not

1       only was Mr. Blackie well aware of the fact that this was  
2       trash, filthy trash, he was also aware of the fact that there  
3       was a notice to him that this was illegal, but he still  
4       proceeded on into it.

5           A just punishment for this offense requires that an  
6       adequate deterrence to this criminal conduct be had. Let me  
7       go back here and make what I think is a very salient point to  
8       this particular matter. As the Court indicated, this matter  
9       arises under 18 United States Code 2252(a)(4)(B) and (b)(2).  
10      That's what the indictment was for. That particular section  
11     of the Code, of the Federal Criminal Code, has been visited by  
12     Congress many times, and Congress has recently spoken very  
13     strongly to the Sentence Guideline Commission through its  
14     lawmaking authority that this is a serious problem, and  
15     Congress wants the courts to address this with stiff  
16     sentences, hard sentences. Therefore, the Court can't help  
17     but note that the adequate deterrence to criminal conduct is  
18     what Congress wants this statute and the courts to do in these  
19     kind of situations.

20           To protect the public from further crimes of this  
21     defendant this Court believes requires a term of custody  
22     consistent with the guideline, but designed to give Mr.  
23     Blackie mental health assessment and treatment not only for  
24     depression, not only for post-traumatic stress syndrome, but  
25     to deal with the questions that give rise to why a person in

1 his situation would turn to this kind of pornography as a  
2 solace of some kind.

3                 Therefore, this Court believes that that 21 -- 41  
4 months in the custody of the Federal Bureau of Prisons, not  
5 only is it within the adjusted offense guideline of 20 and a  
6 criminal history of I and therefore safely within the harbor  
7 that the Court of Appeals wants this Court to navigate, but in  
8 fact it provides a lengthy period, not too lengthy, not  
9 greater than necessary, but sufficient for Mr. Blackie to get  
10 some mental health treatment and assessment, to reflect on who  
11 he is and what he has done, and to provide him with some  
12 stability as he prepares to reenter society as a productive  
13 member.

14                 The Court requires that he be placed as nearly as  
15 possible to central Michigan where his family is. This Court  
16 is satisfied that the provisions of his sister taking care of  
17 his daughter under the circumstances is sufficient not only  
18 for him and his peace of mind, but also for her welfare while  
19 he is gone, that appearing to be a just and good situation.

20                 It appears that a three-year period of supervised  
21 release with the standard conditions of reporting and  
22 remaining law-abiding shall follow with the option of the  
23 probation officer being to enroll Mr. Blackie in a program of  
24 mental health. Mr. Blackie will have to register as a sex  
25 offender in the state of Michigan as required by Michigan law,

1 and this Court would require that Mr. Blackie be gainfully  
2 employed.

3                 This Court would additionally require that he  
4 provide 300 hours of community service in lieu of a fine that  
5 this Court might otherwise impose. This Court finds that Mr.  
6 Blackie's an intelligent individual. He certainly is in a  
7 position to make a contribution to the community from which he  
8 has come, and that contribution can be materially a good  
9 matter and in lieu of a fine is thoroughly appropriate. In  
10 all other respects the Court believes that Mr. Blackie should  
11 be able to avail himself of the services of the community and  
12 be gainfully employed and be a productive, honorable member of  
13 the community.

14                 Any legal objection to the sentence imposed, Ms.  
15 Woods?

16                 MS. WOODS: No, Your Honor, thank you.

17                 THE COURT: Mr. Stroba?

18                 MR. STROBA: No, Your Honor, thank you.

19                 THE COURT: You have a right of appeal of this  
20 sentence, Mr. Stroba, on behalf of your client within ten  
21 days. Those forms are being provided to your client.

22                 The record should reflect that Mr. Blackie will be  
23 given credit for all the time that he has served and is  
24 serving at this time in conjunction with this resentencing in  
25 this matter.

1                   This Court particularly wants to thank you, Mr.  
2 Stroba, for your representation in this, albeit it has come of  
3 late, but you have done an exemplary job on behalf of Mr.  
4 Blackie. That's all. Thank you.

5 MR. STROBA: Thank you, Your Honor.

6 (Proceedings concluded at 9:08 a.m.)

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## CERTIFICATE OF REPORTER

10 I, Kevin W. Gaugier, Official Court Reporter for the  
11 United States District Court for the Western District of  
12 Michigan, appointed pursuant to the provisions of Title 28,  
13 United States Code, Section 753, do hereby certify that the  
14 foregoing is a true and correct transcript of the proceedings  
15 had in the within-entitled and numbered cause on the date  
16 hereinbefore set forth.

17 I do further certify that the foregoing transcript  
18 was prepared by me.

22 | /s/ Kevin W. Gaugier

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